IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12170 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI SOMABHAI VAGHRI

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 08/02/2001

ORAL JUDGEMENT

#. Heard learned counsel for the parties. Learned counsel for the parties are in agreement that the petitioner in this petition is co-detenu of the petitioner in Special Civil Application No. 12112 of 2000. They are also in agreement that this matter is squarely covered by the decision of this court in Special Civil Application No.12112 of 2000.

#. As a result of this consensus arrived at between the parties, the Special Civil Application succeeds and the same is allowed. The order of detention of the petitioner dated 22.9.2000 is quashed and set aside. The petitioner Kanubhai Somabhai Vaghri, the detenu, at present in Special Jail, Bhuj-Kachahh be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.5,000= as the costs of this petition to the petitioner.

#. The learned counsel for the respondent strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondent. Otherwise also I consider it to be a fit case to award the costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.5,000/= as a fees from the petitioner to provide him her professional services in this case and this amount has been paid by the petitioner to her. It is the question of the personal liberty and the petitioner is free to engage an advocate of his choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate who charges lesser fees. The advocate is a professional and if any body approach to him to provide his professional services he can charge his own fees. This may not be only money which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses for filing of the petition but the counsel for the petitioner has not produced any bill of expenses under these heads and as such that amount cannot be awarded to the petitioner.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. Its only fault is that it has no control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money. This money has to be paid to the petitioner by the State of Gujarat for not of its own fault but for the negligence, carelessness, reckless and unmindful of duty of its officer concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter

and whosoever is found responsible for not filing the reply in the matter in the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary loss and that amount is recovered from those officers its House may not be corrected.

(S.K.Keshote, J.)